

1989

## Session Law 89-135

Florida Senate & House of Representatives

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**S 109 GENERAL BILL/CS/1ST ENG by Commerce; Gordon and others  
(Similar H 427)**

Contracts/Enforcement; provides that parties to certain contracts may agree that law of this state will govern their rights & duties under such contracts & may agree to subject themselves to jurisdiction of courts of this state in event of disputes under such contracts; provides that act does not affect enforcement of choice-of-law provisions in, or jurisdiction of courts of this state re other contracts; provides for applicability of act. Effective Date: 06/27/89.

01/13/89 SENATE Prefiled  
02/13/89 SENATE Referred to Commerce; Judiciary-Civil  
04/04/89 SENATE Introduced, referred to Commerce; Judiciary-Civil -SJ 16  
04/14/89 SENATE Extension of time granted Committee Commerce  
04/20/89 SENATE On Committee agenda—Commerce, 04/24/89, 2:00 pm, Room-A-(LL-37)—Not considered  
04/28/89 SENATE Extension of time granted Committee Commerce  
05/04/89 SENATE On Committee agenda—Commerce, 05/08/89, 1:15 pm, Room-A-(LL-37)  
05/08/89 SENATE Comm. Report: CS by Commerce -SJ 293  
05/10/89 SENATE CS read first time -SJ 294; Now in Judiciary-Civil -SJ 293  
05/12/89 SENATE Extension of time granted Committee Judiciary-Civil  
05/16/89 SENATE Withdrawn from Judiciary-Civil -SJ 378; Placed on Calendar  
05/25/89 SENATE Placed on Special Order Calendar -SJ 449; CS passed as amended; YEAS 38 NAYS 0 -SJ 474  
05/26/89 HOUSE In Messages  
06/01/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 105 NAYS 0 -HJ 1064  
06/01/89 Ordered enrolled -SJ 691  
06/12/89 Signed by Officers and presented to Governor  
06/27/89 Approved by Governor; Chapter No. 89-135

**NOTES:** Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: \_\_\_\_\_

BILL NO. CS/SB 0109

DATE: May 9, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	<u>Jones JJ</u>	<u>Wilkes SW</u>	1. <u>COM</u>	<u>Fav/CS</u>
2.	_____	_____	2. <u>JCI</u>	<u>Withdrawn</u>
3.	_____	_____	3. _____	_____
4.	_____	_____	4. _____	_____

SUBJECT:

Enforcement of Contracts

BILL NO. AND SPONSOR:

CS/SB 0109 by Commerce Committee and Senator Gordon

I. SUMMARY:

A. Present Situation:

Section 671.105, F.S., under certain circumstances authorizes contracting parties to choose Florida law and Florida courts to interpret and enforce their contracts. The problem s. 671.105, F.S., and CS/SB 109 address arises when some element of a transaction tends to give it a strong non-Florida component. When a dispute arises regarding the interpretation or enforcement of the contract, two kinds of problems result. The dispute may be brought before a court of Florida or of another state or country. Whichever court is presented with the dispute must decide whether the facts of the transaction will allow it to take jurisdiction. Having made that decision, the court must then determine whether Florida law or that of another state or country will apply to the dispute.

Nations employ a system of private international law comparable to the American idea of "conflicts of law." These systems provide answers to the questions of jurisdiction and applicable law mentioned above. Certain jurisdictions which serve as important commercial transaction centers have seen the importance of creating a commercial system, including the civil courts, which is able to serve the commercial dispute settlement needs of contracting parties.

Last year, the Legislature considered a bill similar to this one, but amended it to limit its application to deposits in and extensions of credit by financial institutions located in Florida. The Legislature also created the International Banking and Trade Study Commission to advise on possible measures to reduce impediments to commerce in Florida. Earlier this year, the Commission included passage of this bill in its recommendations to the Legislature.

B. Effect of Proposed Changes:

CS/SB 109 relates to contracts involving the equivalent of \$250,000, excepting those for employment, personal purposes, involving certain sections of the U.C.C., or which relate to deposits in or extensions of credit by financial institutions located in Florida. In addition, the bill excludes contracts in which the concerned parties do not have enough presence in the state (minimum contacts) as to allow the state to adjudicate a future contractual dispute.

Taking into consideration the above mentioned exceptions, the bill permits parties to any such contract to agree that the laws of Florida will govern the contract. If parties have chosen Florida law, they may additionally agree to submit to the jurisdiction of Florida courts, which will enforce such a choice of forum to the limits permitted by the U.S. Constitution. The application of the bill is limited to

contracts "arising out of a transaction involving" at least \$250,000.

CS/SB 109 takes effect upon becoming a law, and is applicable to all contracts except those which are the subject of legal proceedings begun before the bill's effective date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The economic impact of CS/SB 109 upon the public should be insignificant.

B. Government:

While indeterminate at this time, some increase in court system related costs might be expected.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

**\*\*AS PASSED BY THE 1989 LEGISLATURE\*\***

STORAGE NAME: s109-f.com  
DATE: 06/28/89

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON COMMERCE  
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** SB 109

**RELATING TO:** Enforcement of Contracts

**SPONSOR(S):** Commerce Committee, Senator Gordon & Others

**EFFECTIVE DATE:** Upon becoming a law.

**DATE BECAME LAW:** June 27, 1989

**CHAPTER #:** 89-135, Laws of Florida

**COMPANION BILL(S):** HB 427

**OTHER COMMITTEES OF REFERENCE:** (1) Judiciary-Civil

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**I. SUMMARY:**

This bill would provide certain contracting parties with the ability to choose Florida law to govern their commercial contracts, and to have any disputes, including those involving interpretation of Florida law, resolved by Florida courts. It will give to Florida courts explicit statutory authority to take jurisdiction in disputes in which a choice of Florida law has been made by the parties.

**A. PRESENT SITUATION:**

The current lack of an explicit statute authorizing contracting parties to choose Florida law and Florida courts to interpret and enforce their contracts poses several uncertainties for parties doing business in Florida. The problem arises when some element of a transaction tends to give it a strong non-Florida component. When a dispute arises regarding the interpretation or enforcement of the contract, two kinds of problems result. The dispute may be brought before a court of Florida or of another state or country. Whichever court is presented with the dispute must decide whether the facts of the transaction will allow it to take jurisdiction. Having made that decision, the court must then determine whether Florida law or that of another state or country will apply to the dispute.

Nations employ a system of private international law comparable to the American idea of "conflicts of law." These systems provide answers to the questions of jurisdiction and applicable law mentioned above. Certain jurisdictions which serve as important commercial centers have seen the importance of creating

a legal system, including the civil courts, which is able to serve the commercial dispute settlement needs of contracting parties. From ancient Rhodes to modern London and New York, commercial centers have invariably possessed an effective system of courts able and willing to settle commercial disputes.

Last year, the Legislature considered a bill similar to this one, but amended it to limit its application to deposits in and extensions of credit by financial institutions located in Florida. The Legislature also created the International Banking and Trade Study Commission to advise on possible measures to reduce impediments to commerce in Florida. Earlier this year, the Commission included passage of this bill in its recommendations to the Legislature.

**B. EFFECT OF PROPOSED CHANGES:**

HB 427 relates to contracts involving the equivalent of \$250,000, excepting those for employment, personal purposes, involving certain sections of the U.C.C., or which relate to deposits or extensions of credit by financial institutions located in Florida. It permits parties to any such contract to agree that the laws of Florida will govern the contract. If parties have chosen Florida law, they may additionally agree to submit to the jurisdiction of Florida courts, which will enforce such a choice of forum to the limits permitted by the U. S. Constitution. The Application of the bill is limited to contracts "arising out of a transaction involving" at least \$250,000.

The bill takes effect upon becoming a law, and applies prospectively and retroactively to all contracts except those which are the subject of legal proceedings begun before the effective date. This avoids the invalidation of an entire legal proceeding through a change of the applicable law during the course of the proceeding.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

**1. Non-recurring or First Year Start-Up Effects:**

None

**2. Recurring or Annualized Continuation Effects:**

Indeterminate increase in the caseloads of state courts

**3. Long Run Effects Other Than Normal Growth:**

None

**4. Appropriations Consequences:**

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

Possible indeterminate increase in costs of the court system

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

Will enhance Florida's attractiveness as an international commercial center. May increase Florida's share of certain types of business presently transacted in other jurisdictions. Increased certainty of legal aspects of international commercial transactions would lower costs for transacting parties.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Will result in increased competitiveness of Florida businesses due to increased predictability of the legal system. Increasing use of Florida as a standard commercial jurisdiction would likely be beneficial to the general business development of the state.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill would aid in the process of making Florida the region's chief financial center and the forum of choice for commercial transactions of all types, which would have broad based positive effects on the state's economy.

IV. COMMENTS:

This bill is largely modeled after Title 14, New York Law of General Obligations, with refinements that avoid possible constitutional difficulties of that statute.

This bill positively addresses those aspects of the Mission Statement of the Committee on Commerce relating to improvement of Florida's position in both the regional and international economies. It also furthers those policies contained in the House Policy Statement relating to the continuation of a business climate that fosters the growth of international trade.

V. LEGISLATIVE HISTORY:

ENACTED BILL:

Senate Bill 109 by the Committee on Commerce and Senator Gordon was introduced on April 4, 1989, and referred to the Committees on Commerce and Judiciary-Civil (SJ 00016). On May 8 the Committee on Commerce reported the bill favorably as a Committee Substitute (SJ 00293), adding language to limit the effect of the bill to contracts in which at least one party is a citizen or resident of either Florida or a foreign nation. On May 16 the bill was withdrawn from the Committee on Judiciary-Civil (SJ 00378) and placed on the Senate Calendar. On May 25 the Committee Substitute for SB 109 was placed on the Special Order Calendar (SJ 00449), was amended to clarify the language of the previous changes, and passed as amended 38 to 0 (SJ 00474). On June 1 the House received CS/SB 109 and passed it 105 to 0 (HJ 01064), after which it was ordered enrolled (SJ 00691). The Bill was signed by the officers and presented to the Governor on June 12, and signed into law by the Governor on June 27 (Chapter 89-135).

DISPOSITION OF COMPANION:

House Bill 427 By Representative Burke was introduced on April 4, 1989, and referred to the Committees on Commerce and Appropriations (HJ 00047). The International Trade and Relations Subcommittee of the Committee on Commerce considered the bill on April 6 and reported it favorably to the full committee, which reported it favorably on April 13 with one amendment which limited the effect of the bill to contracts in which at least one party is a citizen or resident of either Florida or a foreign nation (HJ 00225). The bill was withdrawn from the Committee on Appropriations and placed on the Calendar on May 19 (HJ 00548). HB 427 was allowed to die on the Calendar in favor of passage by the House of the Senate companion.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Todd Kocourek \_\_\_\_\_

Staff Director:

William Leary \_\_\_\_\_ 

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

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**STORAGE NAME:** s109-f.com

**DATE:** 06/28/89

**PAGE:** 5

**APPROPRIATIONS:**

Prepared by:

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Staff Director:

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